



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR

Introduction

This matter proceeded by way of an *ex parte* Direct Request Proceeding, pursuant to section 55(4) of the *Residential Tenancy Act* (the “*Act*”), and dealt with an Application for Dispute Resolution by the landlord for an Order of Possession based on unpaid rent and a monetary Order.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on May 22, 2015, at 5:50 pm, the landlord’s agent “TD” served the tenant with the Notice of Direct Request Proceeding by way of personal service via hand-delivery. The Proof of Service form establishes that the service was witnessed by “HW” and a signature for HW is included on the form.

Based on the written submissions of the landlord, and in accordance with section 89 of the *Act*, I find that the tenant has been duly served with the Direct Request Proceeding documents on May 22, 2015.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?

Is the landlord entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Request Proceeding served to the tenant;
- A copy of a residential tenancy agreement which was signed by the landlord’s agent and the tenant on May 12, 2013, indicating a monthly rent of \$745.00 due on the first day of the month for a tenancy commencing on June 1, 2013;

- A Monetary Order Worksheet showing the rent owing during the portion of this tenancy in question, on which the landlord establishes a monetary claim in the amount of \$745.00 for outstanding rent owing for May 2015;
- A copy of a receipt, dated May 22, 2015, which demonstrates that the tenant provided payment in the amount of \$800.00 toward rent for May 2015 and that the payment was acknowledged by the landlord as being received for use and occupancy only;
- A noted dated May 22, 2015, in which the landlord demonstrates that the tenant paid the unpaid rent in full for the month of May 2015. The landlord does not seek a monetary Order and now only seeks an Order of Possession;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated May 12, 2015, which the landlord states was served to the tenant on May 12, 2015, for \$745.00 in unpaid rent due on May 1, 2015, with a stated effective vacancy date of May 22, 2015;
- A copy of the Proof of Service of the Notice showing that the landlord's agent "TD" served the Notice to the tenant by way of posting it to the door of the rental unit at 12:03 pm on May 12, 2015. The Proof of Service form establishes that the service was witnessed by "HW" and a signature for HW is included on the form.

The Notice restates section 46(4) of the *Act* which provides that the tenant had five days to pay the rent in full or apply for Dispute Resolution or the tenancy would end on the effective date of the Notice. The tenant did not apply to dispute the Notice within five days from the date of service and the landlord alleged that the tenant did not pay the rental arrears.

Analysis

I have reviewed all documentary evidence provided by the landlord. Section 90 of the *Act* provides that because the Notice was served by posting the Notice to the door of the rental unit, the tenant is deemed to have received the Notice three days after its posting. In accordance with sections 88 and 90 of the *Act*, I find that the tenant is deemed to have received the Notice on May 15, 2015, three days after its posting.

As part of this application, the landlord requested a monetary Order arising from unpaid rent owed for May 2015. On the monetary order worksheet, the landlord indicates that unpaid rent in the amount of \$745.00 was outstanding for May 2015, as of May 21, 2015. The landlord provided subsequent evidence to demonstrate that the tenant provided a further payment of \$800.00 toward rent owed for May 2015, and to cover late fees. The landlord indicates that a receipt was subsequently provided to the tenant to

establish that the payment was received for use and occupancy only. Based on the evidentiary material provided by the landlord, there is no longer any unpaid rent owed for May 2015 as the tenant has paid the remaining outstanding rent owed for May 2015 and a receipt was provided to the tenant indicating that the payment was accepted for use and occupancy only. Therefore, I dismiss the landlord's application for a monetary Order for unpaid rent owed for May 2015 without leave to reapply.

However, it remains open for the landlord to pursue an Order of Possession based on the May 12, 2015 Notice, as the tenant did not pay the outstanding rent owed within 5 days of receipt of the Notice.

I find that the tenant received the Notice on May 15, 2015. I find that the tenant was obligated to pay monthly rent in the amount of \$745.00, as established in the tenancy agreement. I accept the landlord's undisputed evidence and find that the tenant did not pay the rent owed in full within the 5 days granted under section 46 (4) of the *Act* and did not apply to dispute the Notice within that 5-day period.

Based on the foregoing, I find that the tenant is conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the corrected effective date of the Notice, May 25, 2015.

Therefore, I find that the landlord is entitled to an Order of Possession based on the May 12, 2015 Notice served to the tenant for unpaid rent owing for May 2015.

Conclusion

I grant an Order of Possession to the landlord effective two days after service of this Order on the tenant. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I dismiss the landlord's application for a monetary Order for unpaid rent owing for May 2015, without leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: June 01, 2015

Residential Tenancy Branch

